Supreme Court, U. S.
FILED
SEP 10 1976
MICHAEL RODAK, JR., CLERK

Nos. 75-1618 and 75-1738

In the Supreme Court of the United States

OCTOBER TERM, 1976

VINCENT MANNELLA, PETITIONER

v.

UNITED STATES OF AMERICA

FRANK JOSEPH ROSA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The judgment orders of the court of appeals (Pet. Apps. A) are not reported. The opinion of the district court (Pet. No. 75-1618, App. B; Pet. No. 75-1738, App. C) is reported at 404 F. Supp. 602.

JURISDICTION

The court of appeals entered judgments on April 7, 1976, and denied petitions for rehearing on May 3, 1976 (Pet. No. 75-1738, App. B). The petition for a writ of cert-

iorari in No. 75-1618 was filed on May 6, 1976. The petition in No. 75-1738 was filed on May 29, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Department of Justice attorneys who presented the case to the grand jury lacked proper authorization to do so.

2. Whether "attempted" extortion is proscribed by 18 U.S.C. 1951 (the Hobbs Act).

3. Whether evidence of a potential effect on interstate commerce by an act of attempted extortion is sufficient to satisfy the interstate commerce requirement of the Hobbs Act.

4. Whether the evidence was sufficient to sustain petitioner Rosa's conviction as an aider and abettor.

STATEMENT

Following a jury trial in the United States District Court for the Western District of Pennsylvania, petitioners were convicted of attempting to obstruct commerce by extortion, in violation of 18 U.S.C. 1951. Petitioner Mannella was sentenced to five years' imprisonment and a fine of $2,500. Petitioner Rosa was sentenced to five years' imprisonment and a fine of $10.000. The court of appeals affirmed (Pet. Apps. A).

On July 23, 1974, Joseph Vaccarello, Jr., a landscape contractor doing business in Ohio, West Virginia, and Pennsylvania, went to petitioner Mannella's office in response to the latter's request and there was introduced by Mannella to petitioner Rosa and co-defendant Sica, who represented themselves to be members of the Monroeville Borough Council (Tr. 48, 60, 61, 63, 92). Vaccarello was asked if he had submitted a bid for the

construction of a park in Monroeville Borough. When he acknowledged that he had, co-defendant Sica replied: "[W]e have a problem with the job and we would like to see you get the job but we would like a donation" (Tr. 64-65).

At a second meeting between Mannella and Vaccarello later in the day, Mannella told Vaccarello that the "donation" would be $10,000 (Tr. 71-72) and that if it was not forthcoming Vaccarello would not get the park project (on which, it had already been determined, he had submitted the lowest bid) or any other work in the Borough of Monroeville (Tr. 81). Mannella then showed Vaccarello a copy of the minutes of the Borough's Recreation Committee, which indicated that Vaccarello would not be awarded the park project (Tr. 78-79).

Vaccarello refused to make the payment but was subsequently awarded the contract nonetheless (Tr. 95). Thereafter, in late September or mid-October, Vaccarello asked Mannella why he had sent the F.B.I. to his office. Mannella replied, "[w]ell, don't worry what is going on, they are just fishing." At a later accidental meeting, Mannella asked Vaccarello: "I just came from my attorney's office." "Tell me, did you pay those fellows the $7,500.00?" Vaccarello responded: "What 7,500?" "You know I didn't pay them" (Tr. 142, 143).

ARGUMENT

1. Petitioners contend that the Department of Justice attorneys who presented this case to the grand jury lacked proper authorization to appear before that body and that the resulting indictment was therefore invalid (Pet. No. 75-1618, pp. 12-13; Pet. No. 75-1738, pp. 13-14). The Special Attorneys were directed, however, by a commission properly issued under 28 U.S.C. 515(a) by the

Assistant Attorney General of the Criminal Division of the Justice Department, to concern themselves with violations of the criminal laws of the United States (Pet. No. 75-1618, App. C). As appellate courts presented with this question have uniformly held, the generality of such an authorization does not invalidate either the Special Attorneys' appearance before the grand jury or the presentation by them of evidence relating to crimes regarding which the grand jury returns an indictment. See, *e.g., In re Subpoena of Persico*, 522 F. 2d 41 (C.A. 2); *United States* v. *Wrigley*, 520 F. 2d 362 (C.A. 8), certiorari denied, 423 U.S. 987.

2. Petitioners contend that, since their effort to extort money from Vaccarello was unsuccessful, their conduct did not fall within the ambit of the Hobbs Act (18 U.S.C. 1951), which, they claim, does not forbid attempted extortion (Pet. No. 75-1618, pp. 11-12; Pet. No. 75-1738, pp. 9-13). The Hobbs Act provides:

> Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do * * * shall be [punished as prescribed].

In our view, the attempt conspiracy provision of the statute can be sensibly construed in only one way: to prohibit conspiracies or attempts to rob or extort that would, if successful, obstruct, delay, or affect commerce.

Petitioners contend, however, that the phrase "attempts or conspires" modifies "obstructs, delays, or affects commerce" rather than "robbery or extortion." If petitioners' construction were correct, then the statute would prohibit, not attempted robbery or extortion, but only completed robberies or extortions that are part of attempts or conspiracies to obstruct commerce. This

would convert what seems plainly intended as a jurisdictional element of the offense into the gravamen of the crime and would leave the attempt/conspiracy prohibition with no practical application, it being most unlikely that would-be robbers or extorters care at all whether their proposed criminal scheme affects commerce. Congress could not have intended such a nonsensical result.

The Second Circuit rejected an identical argument in *United States* v. *Tropiano*, 418 F. 2d 1069, 1083, certiorari denied, 397 U.S. 1021, holding that the statute "embrace[s] an attempt or conspiracy to interfere with commerce by extortion even though the attempt or conspiracy failed because the extortion was uncompleted." See also *United States* v. *Pranno*, 385 F. 2d 387, 389-390 (C.A. 7), certiorari denied, 390 U.S. 944. This result is clearly correct even if a nice parsing of the language does not inevitably lead to it. In enacting the Hobbs Act Congress was legislating, not for linguists, but in a common-sense fashion, to outlaw just the sort of conduct in which petitioners have been shown to have engaged. Petitioners offer no legislative history in support of their belief that Congress intended to except the type of activities revealed here from the reach of the statute, and we know of none.

Other courts of appeals have also indicated that 18 U.S.C. 1951 proscribes attempted extortion. *United States* v. *Iozzi*, 420 F. 2d 512 (C.A. 4), certiorari denied, 402 U.S. 943; *United States* v. *Starks*, 515 F. 2d 112, 116 (C.A. 3) (*dictum*); *United States* v. *Jacobs*, 451 F. 2d 530, 534 (C.A. 5) (*dictum*), certiorari denied, 405 U.S. 955; *Hulahan* v. *United States*, 214 F. 2d 441, 445 (C.A. 8),

certiorari denied, 348 U.S. 856; *United States* v. *Green*, 246 F. 2d 155, 157 (C.A. 7), certiorari denied, 355 U.S. 871.[1] Cf. *United States* v. *Feola*, 420 U.S. 671.

3. Petitioner Mannella contends (Pet. No. 75-1618, pp. 8-11) that the government failed to establish that the attempted extortion, if successful, would have affected interstate commerce. The predicate to this argument is that the government did not show that the requested extortionate payment would have come from Vaccarello's business, as opposed to his personal resources or those of his family.

Even if the money would have come from a source other than from Vaccarello's business directly, we submit that the government would not have failed in its proof. The attempted extortion consisted of a direct threat to the ability of a business engaged in interstate commerce to pursue its customary operations. In such circumstances, the nature of the extortionate demand, directly threatening interstate commerce activities, alone suffices to satisfy the jurisdictional requirement of the statute. Moreover, regardless of their source, funds available to Vaccarello to obtain a business contract in response to an extortionate demand would presumably be available to Vaccarello for other, legitimate business purposes as well.

[1]Petitioners' reliance (Pet. No. 75-1618, p. 10; Pet. No. 75-1738, p. 12) upon *United States* v. *Enmons*, 410 U.S. 396, for the proposition that federal criminal jurisdiction under the Hobbs Act should be narrowly construed, is misplaced. The Court there held, in light of the language and legislative history of the Act, that Congress did not intend the Act to reach violence and threats that were intended to achieve the otherwise legitimate objectives of employees in a wage dispute (*id.* at 411). In the instant case, however, petitioners' objective — the receipt of money from Vaccarello in return for the award of the park project — fell squarely within the reach of the statute.

Thus, so long as Vaccarello's business affected interstate commerce (petitioners do not argue that it did not), payment of the money demanded would have depleted the assets available to that business in one form or another, and accordingly would have affected interstate commerce within the meaning of the statute.

In any event, proof that the money would have come directly from Vaccarello's business was ample. Vaccarello testified that when Mannella told him that he and his confederates wanted $10,000, Vaccarello responded, "that is ridiculous, there is no way it could be paid on a job of this size" (Tr. 73). Vaccarello further testified that Mannella told him that another contractor had paid $20,000 on a $700,000 project. Vaccarello distinguished that situation from his own by pointing out that the other contractor "had no labor of any kind," that $20,000 on $700,000 is "a lot different from 10,000 on 128[100]" and that he was using "lower price stuff" (Tr. 73).

From this testimony there was ample basis for the jury to conclude that Mannella and Vaccarello intended that the "donation" of $10,000 would come from Vaccarello's business assets. Thus, the requested extortionate payment of $10,000 to petitioners, if made, would have depleted the resources of the enterprise to carry on its business in interstate commerce. Whatever may be said of the "depletion of assets" theory as applied to the far-fetched situations hypothesized by petitioner Mannella (Pet. No. 75-1618, p. 9), in cases such as the present one, where the extortion depletes the assets of a business engaged in interstate commerce, jurisdiction is established under the

Hobbs Act quite without detriment to or invasion of the domain of local law enforcement.[2]

4. Petitioner Rosa contends (Pet. No. 75-1738, p. 8) that the government failed to prove that he aided and abetted the attempted extortion. As the district court below concluded, however (404 F. Supp. at 615-618), there was ample evidence that petitioner Mannella was not alone in the planning and execution of the attempted extortion (see *Nye and Nissen* v. *United States*, 336 U.S. 613; *United States* v. *Barber*, 429 F. 2d 1394, 1397 (C.A. 3)), and petitioner Rosa, like co-defendant Sica, was introduced to Vaccarello as a representative of several councilmen from the Borough of Monroeville. Both men were portrayed as having "a problem" with Vaccarello's bid on the park project, as wanting Vaccarello "to get the job," and as desiring a "donation" in return (Tr. 64-65). Without such representations it is unlikely that Vaccarello would have been convinced that Rosa and Sica had any ability to prevent his firm from obtaining the contract. Moreover, although Rosa and Sica were not present when Mannella designated the amount of the contribution, Mannella made reference to their participation when he stated "[w]e don't take checks" and when he explained that his own role was simply that of middleman (Tr. 73). Under these circumstances, the court's

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[2]See *United States* v. *Mazzei*, 521 F. 2d 639 (C.A. 3) (*en banc*), certiorari denied, 423 U.S. 1014; *United States* v. *Crowley*, 504 F. 2d 992, 998 (C.A. 7); *United States* v. *Pacente*, 503 F. 2d 543, 550 (C.A. 7), certiorari denied, 419 U.S. 1048; *United States* v. *DeMet*, 486 F. 2d 816, 821 (C.A. 7), certiorari denied, 416 U.S. 969; *United States* v. *Augello*, 451 F. 2d 1167, 1169-1170 (C.A. 2), certiorari denied, 405 U.S. 1070; *United States* v. *Addonizio*, 451 F. 2d 49, 77 (C.A. 3), certiorari denied, 405 U.S. 936; *United States* v. *Provenzano*, 334 F. 2d 678, 692-693 (C.A. 3), certiorari denied, 379 U.S. 947.

conclusion that there was sufficient evidence of aiding and abetting was correct and does not require further review.

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

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SEPTEMBER 1976.